

## **Testimony of William C. Buhl, Circuit Judge, before the House of Representatives Judiciary Committee on June 19, 2009 in Detroit, Michigan**

### **Why House Bill 4098 should become law, repealing the Driver's Responsibility Fee:**

I am a Circuit Judge from the 36<sup>th</sup> Judicial Circuit, Van Buren County, Michigan and have served as such since 1989. Since 1997 I have handled most of the felony sentencings for the County. I have spent all of my professional career serving the criminal justice system in Michigan, with 6 years as a Prosecutor and 14 years as a District Judge.

My experience and knowledge in this area is extensive. I know the traffic laws and I am acutely aware of the impact those laws have on Michigan citizens. I also handle all of the appeals from the Secretary of State that are filed in Van Buren County.

While it is undeniable that the Driver's Responsibility Fee generates money for the State of Michigan in excess of \$100,000,000 per year, the costs to the law enforcement community, and the unintended injury to the public mandate repeal. The following are my reasons why this destructive legislation must be terminated:

**A Michigan House of Representatives Subcommittee has held hearings on the Fee and concluded that it was a mistake to enact it.** A special committee from the House Transportation Committee held hearings in 2006 on the effects of the Fee. Representative Tom Pearce chaired the committee and concluded that few would have voted for the Fee had they known the unintended consequences.

**Dubbed a highway safety measure, there is no way to conclusively determine the fees positively impact highway safety** (Washington Post, Tuesday, July 24, 2007). The only states to enact these fees have been New Jersey, New York, Texas, Michigan, and briefly, the Commonwealth of Virginia. The fees have been criticized in every jurisdiction, and no study shows conclusively that the fees positively affect highway safety.

**In Michigan, evidence shows that the Fees negatively affect highway safety.** Senate Intern Elliott Wild made an in depth study of the fees in 2008, and the results did not surprise judges, magistrates, police officers and prosecuting officials around the State. Nearly every dangerous driving offense was up alarmingly, and progressively, since the fees went into effect. The most obvious were fleeing police and failing to stop at accidents. From 2005 to 2007 those crimes were assessed 26% more often. And assessments for driving while suspended rose from 95,323 in 2005 to 137,673 in 2007.

**Fewer drivers are able to purchase automobile insurance.** There have been arguments by some that the Fee will reduce insurance premiums. How that will happen while the number of people able to acquire insurance decreases, is a mystery. One cannot insure a vehicle while possessing no license. Fee assessments for driving without insurance rose from 19,190 in 2005 to 24,301 in 2007.

**While the Fee produces revenues for the State, local governments pay the price.** The Fee costs local units of government. If you doubt this, ask your own municipal attorneys, prosecutors, magistrates, judges, sheriffs or police officers. Ask the Michigan State Police. The increase in the number of arrests and citations for driving while suspended is incredible. One MSP Post Commander told me he stopped a motorist and let him go without charge, even though he was suspended, because of his heartbreaking story about being financially destroyed by the Fee. My own Prosecuting Attorney told me he dismissed a clear case of driving while suspended because of the plight of the defendant because of the Fee, telling him to “drive carefully.” Some officers, magistrates, judges and prosecuting officials spend inordinate amounts of time trying to help defendants avoid conviction and correct the situation. The number of assessments no way reflect the number of occurrences of driving while suspended, nor the number of arrests, and the time and energy that goes into this process grows yearly, because of the injustice of the Fee.

**Changes in the law, increasing punishments for suspended drivers, is creating exaggerated penalties incurred by being economically disadvantaged.** If you are careless while driving, and cause a death, you can be charged with negligent homicide, a 2 year offense. If you are suspended, however the penalty increases to 15 years. If you allowed a person suspended to drive your vehicle and a death results, you are a felon. When suspensions are so commonplace, as they have become with the Fee, thousands of drivers without a privilege are exposed to enhanced punishment, not because they are dangerous drivers, but financially poor drivers. This is inherently unfair.

**Once the economically disadvantaged are caught in the Fee trap, everyone piles on.** You have to see it to believe it. If you get arrested for driving while suspended, you may have a booking fee at the jail. If you can't pay it, a warrant issues for you, and the cost goes up, and perhaps another booking fee. One of my probationers tried to arrange payments on 2 fees. The Treasury failed to apply the agreement to both, garnished her bank account, added a \$50 “warrant fee” while her bank whacked her with a \$70 “legal processing fee,” which cleaned her account without notice causing her mortgage check to bounce, with, guess what - an exorbitant overdraft fee. The State of Michigan will intercept every tax refund until the fees are paid. I have seen fees totally \$13,000. So the State of Michigan doesn't just sit back and leave you suspended until the fees are paid. The fees are aggressively collected. For many, they will never legally drive again. Each new occurrence results in another \$1,000 assessment. And each suspension will require a \$125 reinstatement fee to the Secretary of State before a privilege is returned.

**The Commonwealth of Virginia had the good sense to repeal its mistake.** Based partly on the bad experience of others, Virginia enacted the Fee, and before a year passed, repealed it. Before they became addicted to the income from it they repealed it. They refunded everyone's payment. They lifted suspensions without cost for those who lost their driving privilege because of the Fee. We need to emulate Virginia.

**We are increasing the economic divide in Michigan, making the poor poorer, and making more poor.** Because Michigan's fees are so high for offenses that are economically based, and much more so than other states (see attached comparison), we are manufacturing poor people.

Creating bigger gaps between classes is never a good idea. It makes people feel hopeless. This is the stuff of riots.

**The Fee is helping destroy the credibility of the enforcement of the Motor Vehicle Code in Michigan.** When I was a District Judge, people went to jail for driving while suspended. Punishments were graduated. The more you offended, the longer the jail sentence. Today, the enforcement of Section 904 of the Code is a joke. Few are arrested when stopped. They get appearance tickets, or they are not charged at all. Sentencing is not only not graduated, but jail is seldom imposed. I have seen dozens of offenders receiving only fines and costs for 10 or more convictions of driving while suspended! In effect, we have decriminalized driving while suspended. When judges, magistrates, prosecutors and police officers are helping motorists avoid prosecution or conviction for clear violations of the law, then the law is an ass. The Fee is doing this to the enforcement of the Motor Vehicle Code.

**Pay me now, or pay me later.** Instant gratification has its price, and we are paying, and will, increasingly, continue to pay for this Fee system. Like a narcotic addict, who knows he is slowly killing himself, but has to have his fix, the State of Michigan continues the fee for the fix (revenue), while admitting the Fee's horrid unintended consequences (economic devastation for many, and more dangerous highways). The longer it continues, the more the damage.

# FINDING THAT RESULTS IN ASSESSMENT

\*only Michigan has impaired driving separate - \$500/year for two years, totaling \$1000

STATE	Driving Under Influence*	Implied Consent Refusal	Point System Assessments	No Insurance	Driving While Suspended	Reckless Driving	Fleeing and Eluding	USE OF MONEY
MICHIGAN	\$1000 2 years Total \$2000	No Assessment	7 or more points within 2 yrs \$100 plus \$50 for each point over 7	\$500 2 years Total \$1000	\$500 2 years Total \$1000	\$500 2 years Total \$1000	\$1000 2 years Total \$2000	State General Fund and small Amount to Fire Protection Fund
NEW JERSEY	\$1000 3 years Total \$3000	\$1000 3 years Total \$3000	6 or more points within 3 years \$150 plus \$25 for each additional point	\$250	\$250	No assessment	No assessment	50% Dept. of Motor Vehicles 50% Insurance Companies Assigned Risk Pool
NEW YORK	\$250 3 years Total \$750	\$250 3 years Total \$750	6 or more points in 18 months \$100 per yr for 3 yrs plus \$25 for 3 yrs for additional points	No assessment	No assessment	No assessment	No assessment	GENERAL FUND
TEXAS	\$1000 3 years Total \$3000	No assessment	Same as New Jersey	\$250 3 years Total \$750	\$100 3 years Total \$300	No assessment	No assessment	Emergency Medical services & Highway projects 49.5% ea
VIRGINIA (Proposed -- not adopted)	\$750	No assessment	\$250 each yr there are 8 or more pts plus \$50 for pts over 8 not more than \$450	No assessment	\$300	\$350	\$350	Solely for Transportation Services